



COMMISSION MEETING MINUTES

June 28, 2004

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, June 28, 2004, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

PRESENT: Gail Madden, Commissioner

STAFF PRESENT: Alan Steen, Administrator

Carolyn Beck, Public Information Officer,
Executive

Lou Bright, General Counsel

Sherri Diaz, Administrative Assistant, Marketing
Practices, Executive

Loretta Doty, Director, Human Resources
Division

Jeannene Fox, Assistant Administrator

Buck Fuller, Director, Compliance Division

Gayle Gordon, Director, Legal Services

Linda Hubbard, Administrative Assistant,
Executive

Renee Johnston, Executive Assistant, Executive

Dexter Jones, Acting Director, Marketing
Practices, Executive

Charlie Kerr, Director, Business Services

James "Sam" Smelser, Chief of Enforcement

Gloria Villaseñor, Administrative Assistant,
Enforcement/Grants

GUESTS PRESENT: Winn Atkins, State Government Relations
Director, DIAGEO
Rick Donley, President, Beer Alliance of Texas
Kyle Frazier, Representing National Association
of Beverage Importers
Sheila Gladstone, Attorney at Law
Stacy Gunkel, Policy Analyst, Office of
Lieutenant Governor
Jay Howard, Representing Discus/Wal-Mart
Frances Kurio, Representing Anheuser-Busch
Karen Latta, Policy Analyst, Sunset Advisory
Commission
Emilie Leroux, Analyst, Sunset Advisory
Commission
Bill Levine, General Counsel, Gambrinus
Company
Fred Marosko, Texas Package Stores
Association
Robert Maxwell, President, National Association
of Beverage Importers
Lindsay Meche, Representing Republic
Beverage
Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.
Logan Spence, Office of the Governor
Tom Spilman, Vice President, Wholesale Beer
Distributors of Texas
Keith Strama, Attorney, Wholesale Beer
Distributors of Texas
Randy Yarbrough, Wholesale Beer Distributors
of Texas

CALL TO ORDER

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order.

APPROVAL OF MAY 24, 2004, COMMISSION MEETING MINUTES

Chairman Steen called for a motion to approve the TABC meeting minutes of May 24, 2004. **Ms. Madden moved that the Commissioners approve the minutes of the May 24, 2004, meeting. Chairman Steen seconded the motion. The motion carried.**

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report. Administrator Steen discussed the following areas:

FranklinCovey Training

As part of the strategic planning process, TABC has contracted with FranklinCovey to provide training to staff in the areas of succession planning and execution of agency goals. FranklinCovey sent out an electronic survey to all staff to determine how staff identify and implement agency goals. The responses were anonymous and were sent directly to FranklinCovey. Over 55% of TABC staff responded to the survey. FranklinCovey is analyzing the responses and will provide training to managers in mid-July. Managers will receive training on the "Execution Quotient" (xQ) and on "Seven Habits of Highly Effective Managers". Also, FranklinCovey will provide training on the last day of the TABC statewide meeting in August, entitled "Building Trust". Mr. Steen explained that all three training programs complement each other and will assist staff in the implementation phase of the strategic planning process. Both Commissioners commended Mr. Steen and staff. **Chairman Steen requested that the Commissioners be involved in the process; Mr. Steen assured him that both would be part of the process.**

Sunset and Audit Activities

The Sunset Advisory Commission staff have been meeting with TABC staff and reviewing requested information. They will also meet with industry members and officials in the Dallas area. Mr. Steen reported that the entrance conference has been held with the State Auditor's Office on the HUB (historically underutilized businesses) audit. Also, the Texas Building and Procurement Commission post payment audit is underway. Mr. Steen reported that all Sunset and audit activities are going well.

Marketing Practices Initiatives

Mr. Steen reported that Dexter Jones, the Acting Director for Marketing Practices, has been meeting with industry officials regarding marketing practices. TABC has been working on building relationships with the manufacturing and wholesale tiers of the industry at the front end rather than at the enforcement end. Some marketing practices issues include: CO2 filters provided to the retail tier; the two-beer limit at ballparks and stadiums; label approvals; and complaints regarding different tier relationships.

Local Option Elections

On May 15, 2004, 45 local option elections were held around the state. Of the 45 local option elections, six failed: Early jurisdiction in Brown County; Lancaster jurisdiction in Dallas County; Quinlan jurisdiction in Hunt County; Jacksboro jurisdiction in Jack County; Burleson jurisdiction in Johnson/Tarrant Counties;

and county-wide jurisdiction in Mills County. Mr. Steen explained that TABC is gearing up—by moving resources where needed—to handle the anticipated large number of application requests.

Budget

Mr. Steen reported that all Texas state agencies were notified by the Legislative Budget Board to reduce their legislative appropriations requests (LARs) by 5% each year of the 2006-2007 biennium. Mr. Steen stated that this would amount to a reduction of approximately \$1.4 million each of the two years in TABC's LAR. **TABC's legislative appropriations request budget will be discussed at the July Commission meeting.**

Technology Conversion

Mr. Steen reported that TABC and Versa have committed over 4,500 hours on the transformation project over the last five weeks. The project is now in the latter part of the discovery phase. The project is on time and on budget. **Information Resources Director Garry Sitz will provide an update at the July Commission meeting and will provide a demonstration at the August meeting.**

Strategic Plan

Mr. Steen reported that the agency strategic plan for FY 2005-2009 is complete and is being printed. It will be mailed out by this Friday to the Commissioners and the legislative leadership.

New Employees

Mr. Steen announced the hiring of two new employees effective July 1, 2004: Michael Hernandez, new Training Director, and David Garza, new Homeland Security Chief.

FISCAL STEWARDSHIP OF AGENCY AND FIELD OPERATIONS PURCHASE OF EVIDENCE FUNDS

Chairman Steen called upon Charlie Kerr, Director of Business Services, to provide the agency report on fiscal stewardship.

Mr. Kerr discussed the fiscal stewardship report (Attachment 1) regarding contracts. Beginning September 2003, any contract over \$50,000 must be reported to the Legislative Budget Board. There was discussion concerning TABC staff authorized to sign contracts and General Counsel review of agency contracts before they are signed. General Counsel Lou Bright stated that he reviews significant contracts for consulting and professional services; however, he does not review all contracts and typically does not sign contracts as the approving official at TABC. **Chairman Steen recommended that TABC implement a policy whereby the agency's attorney signs the**

contract to acknowledge that he/she reviewed the contract for meeting legal requirements; this would be in addition to the Administrator or Administrator's designee's signature. Chairman Steen stated that he would locate and share a sample copy of the recommended signature format.

Administrator Steen introduced the second part of Mr. Kerr's presentation on field operations purchase of evidence funds. Mr. Steen explained that while he was in Houston meeting with staff, Agent Thomas "Chad" Chadwick approached him with a suggestion regarding undercover money. Agent Chadwick suggested that undercover funds be moved from headquarters to the field, which would be a much more efficient process for field staff to receive funds for undercover situations. Agent Chadwick's suggestion is ready for implementation.

Mr. Kerr reviewed the previous process for field staff to obtain funds to purchase evidence: The checking account for undercover "buy" money for the state was maintained in Austin. After receiving a request from a district office or captain, headquarters staff would write a check and obtain the signatures of Mr. Kerr and the Administrator or Assistant Administrator. The check would then be mailed to the requesting office. In many instances, the funds would arrive too late for the sting operation, or individuals would have paid for the sting operation themselves and would need to be reimbursed.

Under the new process, each of the eight regions has a separate bank account. There are no monthly fees to the accounts. Captains and lieutenants have signature authority on their respective regional accounts, and they may write a check directly to an agent. The agent can then cash the check and use the funds for the undercover operation that same day. Also, ATM cards have been made available to the field staff.

Mr. Kerr explained that strict policies and procedures are in place and have been reviewed by the internal auditor to ensure that sufficient internal controls exist for the system. Field staff would log their purchases on an online check register that can be reviewed by headquarters at any time. At the end of each month, the log will be sent to headquarters so that Business Services can reconcile the accounts and ensure that all money spent is accounted for in the expense summary.

The Commissioners agreed that the new system would be a much more efficient one. **Chairman Steen stated that he wanted to send a formal letter of appreciation to Agent Chadwick to thank him for the suggestion.**

APPROVAL OF ADDITIONAL CAPITAL BUDGET EXPENDITURES

Mr. Kerr explained that at the previous Commission meeting, capital purchases were discussed that would be paid for with lapsed salary monies. These purchases would come to just under the 25% limit on capital transfer authority. Since that time, however, other badly needed capital items have been identified which could be purchased primarily through salary savings from vacancies in newly budgeted positions. These additional items would exceed the 25% limit, thus requiring a letter to be sent from the Commissioners to the Legislative Budget Board (LBB) and the Governor's Office of Budget and Planning requesting approval to exceed the transfer authority.

Mr. Kerr reviewed the capital items (Attachment 2):

- Undercover surveillance equipment—this equipment is needed for undercover operations and can also be used in a homeland security capacity, particularly since TABC is a first responder to an orange alert.
- Handheld radios—radios are needed for agents to communicate with local law enforcement agencies in their daily duties. In addition, they would be valuable in maintaining communications with local law enforcement agencies in the event of a homeland security situation.
- Rio Grande City tax booth construction—at this time, it is not known whether the owner will approve TABC to construct the booth. Construction of the booth would be contingent upon owner approval and approval for the agency to exceed the transfer authority.
- Laboratory equipment—laboratory equipment is needed to replace outdated equipment that TABC's chemist needs to analyze alcoholic beverages. The current equipment is over 25 years old. The new laboratory equipment would increase efficiency, speeding up the analysis process and thus speeding up the label approval process.
- Modular furniture replacement—modular furniture replacements are needed for headquarters licensing and compliance offices; the current furniture is approximately 12 years old.

Mr. Kerr stated that he discussed these agency needs with the LBB and Governor's Office staff. Upon receipt of a letter from the TABC Commissioners, the LBB and Governor's Office will consider the request based upon the needs of the entire state. The Commissioners and Mr. Steen agreed that all of the requested capital items are needed and are all directly related to operations and efficiencies. Chairman Steen added that most of the requested items are related to safety issues.

Commissioner Madden moved that the TABC request additional transfer authority to exceed its capital budget transfer limitation by \$550,447 for the purchase of undercover surveillance equipment, handheld radios, modular furniture replacements, and laboratory equipment and the construction of the Rio Grande City tax booth. Chairman Steen seconded the motion. The motion passed.

SYNOPSIS OF ETHICS AND WORKPLACE DISCRIMINATION TRAINING

Chairman Steen called upon General Counsel Lou Bright to provide a synopsis of the ethics and workplace discrimination training. Mr. Bright introduced Sheila Gladstone, who has been contracted by TABC to conduct training around the state to TABC employees on workplace discrimination. Ms. Gladstone stated that she is a labor and employment law attorney, having practiced in this field for the last 17 years. She stated that her main focus is on the prevention side in trying to help employers avoid getting into litigation in the first place.

Ms. Gladstone provided a brief overview of the training, "Avoiding Discrimination and Harassment Through Better Communication" (Attachment 3). Ms. Gladstone stated that the main goal of the training is to assist front-line employees in understanding their rights and the rights of others.

Mr. Bright reported that he has received positive feedback on Ms. Gladstone from employees who have participated in the training. Chairman Steen stated that the Commissioners considered this training to be very important, which is why he requested that Ms. Gladstone and Mr. Bright provide a synopsis to the Commissioners of the training being conducting for staff. Ms. Gladstone stated that she has two more sessions remaining; they will be held in Austin in late July.

Chairman Steen asked that "zero tolerance" be discussed. Mr. Bright and Ms. Gladstone explained that "zero tolerance" means that the agency finds conduct leading to a hostile environment not acceptable. It means that unacceptable conduct will not be ignored and that the agency would address the issue before the conduct becomes illegal.

Chairman Steen asked whether the training would be provided for newly hired employees. Administrator Steen stated that a training workgroup is identifying a training plan for each employee. It will be up to each supervisor to ensure that his/her employees receive all of the identified training within a year of being hired. Mr. Steen further explained that Ms. Gladstone's role was meant to get current employees "caught up" in this area of training. He added that the training workgroup is also looking at the possibility of contracting training at the local level.

The Commissioners expressed their appreciation to Ms. Gladstone.

Mr. Bright discussed the ethics training he is conducting for staff around the state (Attachment 4). There are a total of four classes remaining in Houston and Laredo; the ethics training will be completed by the end of July.

The training program mainly focuses on the body of laws that govern conduct in five areas: political activity and dual office holding; conflict of interest; acceptance of gifts and benefits; abuse of state resources; and revolving door. Mr. Bright explained the three basic goals of the training:

- 1) To ensure understanding of the law and where the law is clear;
- 2) To ensure understanding of those areas of the law that are ambiguous;
and
- 3) To ensure understanding of conduct that is lawful but not ethical.

Chairman Steen asked if there were consequences for violation of TABC's code of ethics. Mr. Bright stated that there are consequences and that they are made clear in the training programs. He stated that he emphasizes in the training, however, that TABC's ethical aspirations are done in a collegial, cooperative manner.

Chairman Steen asked whether staff that attend training must sign something as evidence that he/she understood the ethics policy. Administrator Steen stated that a list of attendees is maintained, and each employee is required to sign a "Code of Ethics" that is maintained in the employee's file.

Chairman Steen reiterated the benefit that he and Ms. Madden received by being provided a synopsis of the two training programs.

**APPROVAL TO ADOPT PROPOSED NEW RULE 16 TEXAS
ADMINISTRATIVE CODE §37.3, GOVERNING THE SERVICE OF
PLEADINGS IN CONTESTED ADMINISTRATIVE CASES**

Chairman Steen called upon General Counsel Lou Bright to discuss the proposed new rule governing the service of pleadings in contested administrative cases (Attachment 5). Mr. Bright explained that the rule had been published, and no comments were received. He deferred to Gayle Gordon, Legal Services Director, to explain the rule. Ms. Gordon explained that the rule lays out that a letter sent certified to the last known registered address in the Commission's file is prima facie evidence of service. The Commission had lost a case in which all steps were taken to serve a respondent in a case; however, the respondent refused the certified mail. Ms. Gordon explained there was not a rule in place that accompanied the statute

to make it definitive that this would be considered proof of service. Ms. Gordon requested that the Commissioners adopt the rule to enable TABC to perfect service by certified mail.

Chairman Steen asked if there was anyone in attendance who wished to make comment on this rule. As there were no comments, **Commissioner Madden moved that the Commissioners adopt proposed new rule 16 Texas Administrative Code, §37.3, governing the service of pleadings in contested administrative cases. Chairman Steen seconded the motion. The motion carried.**

APPROVAL TO PUBLISH PROPOSED CHANGES TO RULES 16 TEXAS ADMINISTRATIVE CODE §45.77(C) AND §45.90(C)(2), RELATING TO PERMISSIBLE CONTENT OF MALT BEVERAGE LABELS

General Counsel Lou Bright explained that a request for rulemaking was made by the National Association of Beverage Importers relating to the permissible content on labels and advertising for malt beverage products (Attachment 6). Mr. Bright stated that there are two kinds of malt beverages listed under current statute—the higher alcohol beverages called malt liquor and the lower alcohol content called beer.

Traditionally, there are methods of brewing malt beverages that are typically beers or typically malt liquors. They may be described as stout, lagers, and pilsners. Mr. Bright explained that TABC's current rules place restrictions on the ability of brewers to use those classifications for beer or malt liquor. The purpose of the two proposed rule amendments (Attachment 6) would be to allow brewers greater latitude in using classification words to describe the brewing process by which they had made the beer or malt liquor product.

Through a letter (Attachment 6), TABC requested viewpoints from industry members. Mr. Bright noted that some supporting comments and no objecting comments were received. Mr. Bright requested that the rules be published for formal comment.

Chairman Steen announced that there were two requests to provide public comment on the proposed rule changes. He called upon Randy Yarbrough, one of the two registrants who requested to provide comment.

Mr. Yarbrough introduced himself, stating that he represented Wholesale Beer Distributors of Texas (WBDT). He explained that WBDT was—generally speaking—in favor of the rule changes. WBDT, however, recommends that the rules clearly delineate the statutory term "beer" for those products of 4% or below 4% by weight and the term "ale" or "malt liquor" for those products above 4% by weight. Mr. Yarbrough explained that if these terms on the

product labels are not clearly delineated as such, there could be confusion to both the public and to the regulators. Mr. Yarbrough summarized that WBDT was in general support of the rule amendments, provided that the labels distinguish the particular class of the product as defined by the Alcoholic Beverage Code (beer and ale or malt liquor). This would ensure that there would be no misunderstanding in the marketplace. Mr. Yarbrough pledged his assistance to TABC in the rulemaking process.

Chairman Steen called upon Robert Maxwell, President of the National Association of Beverage Importers (NABI). Mr. Maxwell explained that NABI is an international trade association that represents the importers of alcoholic beverages. NABI represents the companies that import 95% of all beer imported in the United States. He introduced his associates: Kyle Frazier, NABI's Texas representative, Bill Levine, General Counsel of Gambrinus Company, and Winn Atkins of DIAGEO.

Mr. Maxwell explained that NABI is recommending that Texas law be changed to allow the identification of the style of the beer that is sold. NABI is requesting that TABC modify its regulations so that the different types or styles of malt beverages (such as lager, porter, stout, etc.) can be placed on a malt beverage label and advertising, whether the product is defined as a beer (defined as a malt beverage containing 4% or less alcohol by weight), or ale/malt liquor (defined as a malt beverage containing in excess of 4% alcohol by weight). Mr. Maxwell recognized that Texas laws define "beer" as a malt beverage that is not more than 4% alcohol by weight, and the word "ale" or "malt liquor" as a malt beverage over 4% alcohol by weight. He emphasized that NABI is not suggesting or proposing that this requirement be changed.

Chairman Steen thanked both Messrs. Yarbrough and Maxwell for their input.

Chairman Steen called for a motion. Commissioner Madden moved that the Commissioners approve publishing the proposed changes to Rules 16 Texas Administrative Code, Sections 45.77(c) and 45.90(c)(2), relating to permissible content of malt beverage labels. Chairman Steen seconded the motion. The motion carried.

PUBLIC COMMENT

Chairman Steen asked if there was anyone else who wished to provide public comment. Hearing none, Chairman Steen made the following announcement for an executive session.

EXECUTIVE SESSION

Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 3:00 p.m. on June 28, 2004, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Government Code §551.071 and §551.074.

Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being June 28, 2004, and the time, 3:36 p.m. He stated that no final action, decision, or vote was made in the executive session and that there were no matters requiring Commission action at that time.

NEXT MEETING

Chairman Steen announced that the next TABC meeting was rescheduled from July 26, 2004, to Monday, July 19, 2004.

ADJOURNMENT

Ms. Madden moved that the Texas Alcoholic Beverage Commission meeting be adjourned. Chairman Steen seconded the motion. The motion carried, and the meeting adjourned.